

**REISSUE APPLICATION DECLARATION AND POWER OF ATTORNEY  
(BY INVENTOR(S) OR ASSIGNEE)**

(complete A or B)

**A.  DECLARATION BY THE INVENTOR(S)**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name, I believe I am the original, first and sole inventor (*if only one name is listed below*) or an original, first and joint inventor (*if plural names are listed below*) of the subject matter that is described and claimed in letters patent number 5,551,445, granted on September 3, 1996, and for which invention I solicit a reissue patent on the invention entitled Apparatus and Method for Movement Coordination Analysis

the specification of which

- is attached hereto.
- was filed on \_\_\_\_\_, as reissue application number / and was amended on \_\_\_\_\_ (*if applicable*).
- I hereby declare that there is no assignee for this application.

NOTE: "Where no assignee exists, applicant should affirmatively state that fact. If the file record is silent as to the existence of an assignee, it will be presumed that no assignee exists." M.P.E.P., 6th ed., rev. 1, § 1410.01.

**B.  DECLARATION BY ASSIGNEE**

NOTE: The assignee of the entire interest may make the declaration, if the reissue application does not seek to enlarge the scope of the claims of the original patent. 37 C.F.R. § 1.172.

(type or print name of declarant) \_\_\_\_\_, Title \_\_\_\_\_  
of \_\_\_\_\_, Name of company or legal entity on whose behalf declarant is authorized to sign  
declare that I am a citizen of \_\_\_\_\_ and resident of \_\_\_\_\_,  
\_\_\_\_\_, that the entire title to letters patent number \_\_\_\_\_,  
for \_\_\_\_\_,  
granted on \_\_\_\_\_, 19\_\_\_\_ to \_\_\_\_\_ Inventor(s)  
is vested in \_\_\_\_\_, Name of company or legal entity  
that I believe said named inventor(s) to be an original, first and sole inventor (*if only one name is listed*) or an original, first and part inventor (*if plural names are listed*) of the subject matter that is described and claimed in the aforesaid letters patent and in the foregoing specification and for which invention I solicit a reissue patent.

**ACKNOWLEDGEMENT OF REVIEW OF PAPERS AND DUTY OF CANDOR**  
(37 C.F.R. § 1.175)

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information that is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56.

- In compliance with this duty, there is attached an information disclosure statement in accordance with 37 C.F.R. § 1.98.

**PRIORITY CLAIM**

**NOTE:** A "claim" for the benefit of an earlier filing date in a foreign country under 35 U.S.C. 119(a)-(d) must be made in a reissue application even though such a claim was made in the application on which the original was granted. However, no additional certified copy of the foreign application is necessary. M.P.E.P., 6th ed., rev. 1, § 1417.

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed.

(complete C or D)

- C.  No such applications have been filed.  
D.  Such applications have been filed as follows:

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**EARLIEST FOREIGN APPLICATION(S), IF ANY FILED WITHIN 12 MONTHS  
(6 MONTHS FOR DESIGN) PRIOR TO SAID APPLICATION**

Country	Application No.	Date of filing (day, month, year)	Date of issue (day, month, year)	Priority Claimed
				<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>
				<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>
				<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/>

**ALL FOREIGN APPLICATION(S), IF ANY FILED MORE THAN 12 MONTHS  
(6 MONTHS FOR DESIGN) PRIOR TO SAID APPLICATION**

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**BENEFIT OF PROVISIONAL APPLICATION**

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**STATEMENT OF INOPERATIVENESS  
OR INVALIDITY OF ORIGINAL PATENT**  
(37 C.F.R. § 1.175)

That I believe the original patent to be

- partly  
 wholly

inoperative or invalid by reason of (37 C.F.R. § 1.175(a)(1)):

(check all items that may apply)

- a defective specification  
 a defective drawing  
 the patentee claiming more or less than the patentee had a right to claim in the patent.

*NOTE: At least one error must be relied upon as the basis for the reissue. 37 C.F.R. § 1.175(a)(1).*

That the error listed above, which are being corrected, up to the time of the filing of this reissue declaration arose without any deceptive intention on the part of the applicant. (37 C.F.R. § 1.175(a)(2).

*NOTE: For any error corrected not covered by this declaration applicant must submit, before allowance, a supplemental declaration stating that every such error arose without any deceptive intention on the part of the applicant. 37 C.F.R. § 1.175(b)(1).*

- Corroborating affidavits or declarations of others accompany this declaration.

## **POWER OF ATTORNEY**

I hereby appoint the following practitioner(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

*(list name and registration number)*

Bruce D. Sunstein, Reg. No. 27,234	Steven G. Saunders, Reg. No. 36,265
Timothy M. Murphy, Reg. No. 33,198	John J. Stickevers, Reg. No. 39,387
Robert M. Asher, Reg. No. 30,445	Herbert A. Newborn, Reg. No. 42,031
Harriet M. Strimpel, Reg. No. 37,008	Jean M. Tibbetts, Reg. No. 43,193
Samuel J. Petuchoski, Reg. No. 37,910	

*(check the following item, if applicable)*

- I hereby appoint the practitioner(s) associated with the Customer Number provided below to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.
- Attached, as part of this declaration and power of attorney, is the authorization of the above-named practitioner(s) to accept and follow instructions from my representative(s).

---

**SEND CORRESPONDENCE TO****DIRECT TELEPHONE CALLS TO:**  
*(Name and telephone number)*

Address

Timothy M. Murphy  
BROMBERG & SUNSTEIN LLP  
125 Summer Street  
Boston, MA 02110

Timothy M. Murphy at (617) 443-9292

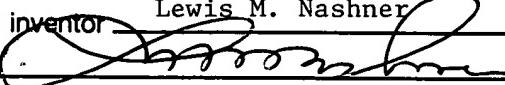
Customer Number \_\_\_\_\_

## **DECLARATION**

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

### **Signature(s)**

**BY THE INVENTOR(S)**

Full name of sole or first inventor Lewis M. Nashner  
Inventor's signature   
Date 8/31/98 Country of Citizenship U.S.A.  
Residence 4011 Coho Lane, Lake Oswego, OR 77034  
Post Office Address Same as residence

Full name of second joint inventor, if any \_\_\_\_\_  
Inventor's signature \_\_\_\_\_  
Date \_\_\_\_\_ Country of Citizenship \_\_\_\_\_  
Residence \_\_\_\_\_  
Post Office Address \_\_\_\_\_

**BY ASSIGNEE OR PERSON AUTHORIZED TO SIGN ON BEHALF OF  
ASSIGNEE**

*NOTE: Even though inventor(s) do not sign, complete above information for inventor(s).*

*(complete the following, if applicable)*

\_\_\_\_\_  
(type name of assignee)

\_\_\_\_\_  
Address of assignee  
\_\_\_\_\_

Title of person authorized to sign on behalf of assignee

Assignment recorded in PTO on \_\_\_\_\_

Reel \_\_\_\_\_

Frame \_\_\_\_\_

A separate  "ASSIGNMENT (DOCUMENT) COVER SHEET"  
or  FORM PTO 1595 is submitted herewith along with the assignment  
ment \_\_\_\_\_

### STATEMENT BY ASSIGNEE

- Attached is a "STATEMENT UNDER 37 C.F.R. 3.73(b)," establishing the right of the assignee to take action in this reissue.

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Signature of assignee or person authorized to sign on behalf of assignee

*(check proper box(es) for any added page(s) forming a part of this declaration)*

- Signature for third and subsequent joint inventors. Number of pages added. \_\_\_\_\_
- Signature by administrator(trix), executor(trix) or legal representative for deceased or incapacitated inventor. Number of pages added. \_\_\_\_\_
- Signature for inventor who refuses to sign or cannot be reached by person authorized under 37 C.F.R. § 1.47. Number of pages added. \_\_\_\_\_
- Statement of inoperativeness or invalidity of original patent. 37 C.F.R. § 1.175. Number of pages added 1 \_\_\_\_\_
- Authorization of attorney(s) to accept and follow instructions from representative.
- Corroborating statements of others.

The patent claims less than I had a right to claim. I failed to appreciate that my invention was not previously claimed with sufficient scope.

I have developed numerous methods and products for diagnosing causes of balance disorders. I have obtained ten U.S. patents, including U.S. Patent Nos. 4,738,269, 5,052,406 and 5,269,318, and the present patent, U.S. Patent No. 5,551,445 is the fourth in this series. Support for the invention may be found in U.S. Patent Application Serial No. 408,184, filed August 16, 1982, and from which each of the four patents in this series claims priority under 35 U.S.C. § 120. The methods set forth in these four patents diagnose balance disorders by providing false information to the soles of the subject's feet and, in some embodiments, to the subject's eyes.

Until recently, I believed that these four patents would clearly cover a method such as that set forth in the attached article, Shumway-Cook, A. and Horak, F.B., "Assessing the Influence of Sensory Interaction on Balance / Suggestion from the Field," The Journal of American Physical Therapy Assn., Vol. 66, No. 10, October 1986. Earlier this year, I learned that the method set forth in this article was being commercialized. An analysis of my patents, unfortunately, did not uncover any claim that would appear to literally cover the method set forth in the attached Shumway-Cook article, despite the fact the method set forth in that article clearly used novel aspects of my invention. Therefore, I believe that, in the present patent, U.S. Patent No. 5,551,445, my invention was not fully and properly claimed to the extent to which I was entitled. New claims 10-14 more fully and properly claim my invention.

This error arose because the patent attorneys who prepared and prosecuted the application leading to the present patent did not fully appreciate the scope of my invention, and because I did not appreciate how limiting were the claims that issued. This error arose without any deceptive intention.

**REISSUE APPLICATION BY THE INVENTOR, OFFER TO SURRENDER**  
**(37 C.F.R. § 1.178)**

To the Assistant Commissioner for Patents:

1. The undersigned applicant of the accompanying reissue application for the reissue of letters patent for the improvement in Apparatus and Method for Movement Coordination Analysis Patent number 5,551,445 granted to him/her on September 3, 1996, of which

- he/she is now sole owner,  
 NeuroCom International, Inc.

is now sole owner by assignment, and on whose behalf and with whose assent the accompanying application is made,

The "ASSENT BY THE ASSIGNEE" to this reissue application is attached.

Date: 8/31/98



Signature(s)  
Lewis M. Nashner

(type or print name(s))

**CERTIFICATION UNDER 37 C.F.R. § 1.10\***

*(Express Mail label number is mandatory.)*

*(Express Mail certification is optional.)*

I hereby certify that this correspondence and the documents referred to as attached therein are being deposited with the United States Postal Service on this date September 1, 1998, in an envelope as "Express Mail Post Office to Addressee," service under 37 C.F.R. § 1.10, Mailing Label Number EM529205145US, addressed to the: Assistant Commissioner for Patents, Washington, D.C. 20231.

Jorge D. Betancourt  
(type or print name of person mailing paper)

  
Signature of person mailing paper

**WARNING:** Certificate of mailing (first class) or facsimile transmission procedures of 37 C.F.R. § 1.8 cannot be used to obtain a date of mailing or transmission for this correspondence.

**\*WARNING:** Each paper or fee filed by "Express Mail" **must** have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. § 1.10(b).

"Since the filing of correspondence under § 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will **not** be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

(Reissue Application by the Inventor, Offer to Surrender (37 C.F.R. § 1.178)—Assent of Assignee  
[17-2]—page 1 of 2)

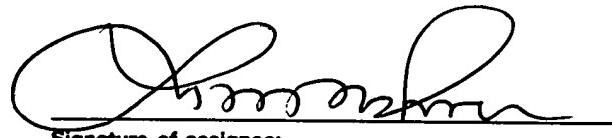
## **ASSENT OF ASSIGNEE TO REISSUE**

The undersigned, assignee of the entire interest in the above-mentioned letters patent, hereby assents to the accompanying application.

### **STATEMENT BY ASSIGNEE**

- Attached is a "STATEMENT UNDER 37 C.F.R. 3.73(b)," establishing the right of the assignee to take action in this reissue.

Date: 8/31/98



Signature of assignee;  
(type or print name of signatory and title if signing  
on behalf of an entity)

Lewis M. Nashner, Chairman

**ASSENT BY ASSIGNEE FOR FILING OF REISSUE APPLICATION**

**NOTE:** *The written assent of all assignees, if any, owning an undivided interest in the original patent must be included in the application for reissue. 37 C.F.R. 1.172(a).*

This is part of the application for a reissue patent filed herewith based on the original patent identified as follows:

Lewis M. Nashner

Name of Patentee

5,551,445

Patent Number

September 3, 1996

Date Patent Issued

Apparatus and Method for Movement Coordination Analysis

Title of Invention

I am an assignee owning

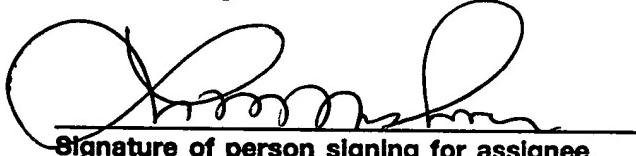
- an undivided interest to the above original patent.  
 a \_\_\_\_\_% (per cent) interest in the above original patent.

I assent to the accompanying application for reissue.

Attached is a "Statement under 37 C.F.R. § 3.73(b) — Establishing Right of Assignee to Take Action."

NeuroCom International, Inc.

Name of assignee



Signature of person signing for assignee

Date: 8/31/98

Lewis M. Nashner

(type or print name and title of person signing for assignee)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

Application No.: /

Group No.:

Filed:

For:

5,551,445

Examiner:

Patent\*:

Issue Date: September 3, 1996

Reexamination No.:

Issue Date: \_\_\_\_\_

Reissue:

Issue Date: \_\_\_\_\_

\*NOTE: Insert name(s) of inventor(s) and title for patent.

**Assistant Commissioner for Patents  
Washington, D.C. 20231****STATEMENT UNDER 37 C.F.R. § 3.73(b)—  
ESTABLISHING RIGHT OF ASSIGNEE TO TAKE ACTION**

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**CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10\***  
(When using Express Mail, the Express Mail label number is mandatory;  
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

**MAILING** deposited with the United States Postal Service in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231

37 C.F.R. § 1.8(a)

37 C.F.R. § 1.10\*

 with sufficient postage as first class mail.  as "Express Mail Post Office to Addressee"Mailing Label No. EM5A9205745U9 (mandatory)**TRANSMISSION** transmitted by facsimile to the Patent and Trademark Office.  
SignatureDate: 9/1/98Jorge D. Betancourt

(type or print name of person certifying)

**\*WARNING:** Each paper or fee filed by Express Mail must have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. § 1.10(b).

"Since the filing of correspondence under § 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will not be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

**NOTE:** 37 CFR 3.73(b) states: "When an assignee seeks to take action in a matter before the Office with respect to a patent application, . . ., patent, registration, or reexamination proceeding, the assignee must establish its ownership of the property to the satisfaction of the Commissioner. Ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office. The submission establishing ownership must be signed by a party authorized to act on behalf of the assignee. Documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office."

**NOTE:** "Section 3.73(b) is amended to remove the sentence requiring an assignee to specifically state that the evidentiary documents have been reviewed and to certify that title is in the assignee seeking to take action. The sentence is deemed to be unnecessary in view of the amendment to §§ 1.4(d) and 10.18." Notice of Oct. 10, 1997, 62 Fed. Reg. 53,131, at 53,174.

1. The assignee(s) of the entire right, title and interest hereby seek(s) to take action in the PTO in this matter.

### **IDENTIFICATION OF ASSIGNEE**

2. NeuroCom International, Inc.

Name of assignee  
Corporation

Type of assignee, e.g., corporation, partnership, university, government agency, etc.

### **PERSON AUTHORIZED TO SIGN**

3. Lewis M. Nashner

(type name of person authorized to sign on behalf of assignee)

Chairman

Title of person authorized to sign

**NOTE:** The Notice of April 30, 1993 (1150 O.G. 62-64) points out:

"The statement under 37 CFR 3.73(b) may be signed on behalf of the assignee in the following two manners if the assignee is an organization (e.g., corporation, partnership, university, government agency, etc.).

"(1) The statement may be signed by a person in the organization having apparent authority to sign on behalf of the organization. An officer (president, vice-president, secretary, or treasurer) is presumed to have authority to sign on behalf of the organization. The signature of the chairman of the board of directors is acceptable, but not the signature of an individual director. A person having a title (manager, director, administrator, general counsel) that does not clearly set forth that person as an officer of the assignee is not presumed to be an officer of the assignee or to have authority to sign the statement on behalf of the assignee. A power of attorney from the inventors in an organization to a practitioner to prosecute a patent application does not make the practitioner an official of an assignee or empower the practitioner to sign the statement on behalf of the assignee.

"(2) The statement may be signed by any person, if the statement includes an averment that the person is empowered to sign the statement on behalf of the assignee and, if not signed by a registered practitioner, the statement must be in oath or declaration form. Where a statement does not include such an averment, and the person signing does not hold a position in the organization that would give rise to a presumption that the person is empowered to sign the statement on behalf of the assignee, evidence of the person's authority to sign will be required."

[Author's Note: The requirement for an oath or declaration for this statement by a person not a registered practitioner was rescinded by the rules effective December 1, 1997.]

(complete the following, if applicable)

- I, the person signing below, state that I am empowered to sign this statement on behalf of the assignee.

## BASIS OF ASSIGNEE'S INTEREST

Ownership by the assignee is established as follows:

**A.**

1.  An assignment from the inventor(s) of the matter identified above, which was recorded in the PTO at

Reel 6827, Frame 0195.

2.  An assignment (document) separately being submitted for recordal herewith.

### AND/OR

- B.**  A chain of title from the inventor(s) to the current assignee as shown below:

1. From: \_\_\_\_\_

Name of inventor(s)

To: \_\_\_\_\_

Recorded in PTO: Reel  
\_\_\_\_\_, Frame \_\_\_\_\_.  
\_\_\_\_\_

2. From: \_\_\_\_\_

Name of inventor(s) or assignee

To: \_\_\_\_\_

Recorded in PTO: Reel  
\_\_\_\_\_, Frame \_\_\_\_\_.  
\_\_\_\_\_

3. From: \_\_\_\_\_

Name of inventor(s) or assignee

To: \_\_\_\_\_

Recorded in PTO: Reel  
\_\_\_\_\_, Frame \_\_\_\_\_.  
\_\_\_\_\_

*(check item below, and add details, if applicable)*

- Additional documents in the chain of title are listed in the attached Supplemental Sheet.

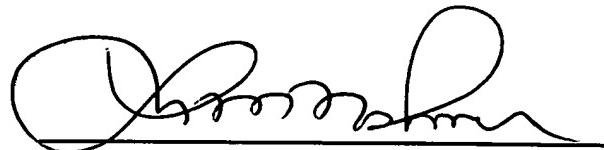
## COPIES OF DOCUMENTS IN CHAIN OF TITLE

*(complete this item, if copies are being sent)*

- Copies of the assignment(s) or other document(s) in the chain of title are attached as follows:

A       1       2  
 B       1       2       3

(Statement under 37 C.F.R. § 3.73(b) — Establishing Right of Assignee to Take Action [16-16]—page 3 of 4)



(Signature of authorized person)

Lewis M. Nashner

(type or print name of authorized person)

Chairman

Title of authorized person



SIGNATURE OF PRACTITIONER

Timothy M. Murphy

(type or print name of practitioner)

BROMBERG & SUNSTEIN LLP

P.O. Address

125 Summer Street, Boston, MA 02110

Reg. No.: 33,198

Tel. No.: ( 617 ) 443-9292

Customer No.: 002101